

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING

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March 8, 1995

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William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Michigan Comments for Proposed Rule Making and Notice of
Inquiry, CC-Docket No. 94-158.

Dear Mr. Caton,

Please find for filing an original and nine copies of the
Comments from Frank J. Kelley, Attorney General of the State of
Michigan.

If you have any questions please call.

Very truly yours,

T.A. Sonneborn
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enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 09 1995

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IN THE MATTER OF)
)
Amendment of Policies and Rules)
Concerning Operator Service)
Providers and Call Aggregators)

CC Docket No. 94-158

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STATE OF MICHIGANS COMMENTS IN RESPONSE
TO THE COMMISSION'S NOTICE OF PROPOSED RULE MAKING, FCC 94-352

Frank J. Kelley, Attorney General of the State of Michigan hereby submits comments in response to the Commission's Notice of Proposed Rule Making, FCC 94-352, CC Docket No. 94-158, released February 13, 1995 (NPRM). The Commission solicited comments on several issues relating to the regulation of operator service providers (OSPs).

COMMENTS

I.

WHETHER THE DEFINITION OF "CONSUMER" SHOULD BE CHANGED TO
COVER CALLED PARTIES IN COLLECT CALL SITUATIONS.

The Commission asks whether the definition of "consumer" in Section 64.708(d) should be expanded to include recipients of collect calls. The Commission tentatively concluded,

"both the calling party, who places the call, and the called party, who must accept the charges in order for the message portion of the call to begin, cooperatively initiate the call as consumers and should receive a brand before they commence their portion of the collect call transaction." NPRM, section III.A.6.

The Michigan Attorney General agrees with the Commission and supports the adoption of measures to protect recipients of collect calls from possible exorbitant charges.

Michigan Attorney General Kelley urges the Commission not only to adopt the proposed branding requirement for called parties receiving collect calls, but also to require OSPs to provide called parties with the disclosure message requested by Michigan Attorney General Kelley, the National Association of Attorneys General (NAAG) Telecommunications Subcommittee, and 23 other State Attorneys General in their Petition "For Rules to Require Additional Disclosures By Operator Service Providers of Public Phones" to the FCC on February 8, 1995 (NAAG Petition). The Attorneys General urged the FCC to require OSPs to provide a statement such as the following to consumers after the caller receives the brand:

"This may not be your regular telephone company and you may be charged more than your regular telephone company would charge for this call. To find out how to contact your regular telephone company, call 1-800-555-1212." NAAG Petition, at 4.

The Attorneys General concluded on the basis of many complaints about unreasonably high rates that consumers are not being supplied with enough information to make informed decisions when using pay phones. Mere branding alone has not been sufficient to put consumers on alert that the charge of a call carried by an unfamiliar company could be many times higher than anticipated. NAAG Petition, at 4. (The NAAG Petition is

attached to these Comments as Attachment A.)

Since the called party in a collect call situation shares in the decision whether to use a particular carrier, this disclosure message should be provided to the called party, as well as the calling party, immediately after the brand so that both participants are provided "with a fairer opportunity to make an informed purchase of OSP services." NAAG Petition, at 5.

In Michigan, the Attorney General's office has received a very large number of complaints alleging that OSPs have charged excessive rates for calls placed from public phones. A significant percentage of these complaints involve collect calls. Under the FCC's current rules, the called party is not allowed to select the carrier who will later bill the call, is not advised of the carrier chosen by the calling party, and is not advised that the rate may be many times higher than expected. The Attorney General believes that more complete information must be provided before called parties can become informed consumers.

Finally, if the Commission decides to solicit responses to the recommendations in the NAAG Petition, Michigan Attorney General Kelley suggests that comments also be requested on providing disclosures to called parties in collect call situations.

II.

ESTABLISHING MINIMUM STANDARDS FOR AGGREGATORS TO FOLLOW IN ROUTING AND HANDLING EMERGENCY CALLS.

Attorney General Kelley takes no position on this issue.

III.

WHETHER THE TERM "AGGREGATOR" SHOULD BE EXPANDED TO APPLY TO CORRECTIONAL INSTITUTIONS.

Michigan Attorney General Kelley takes no position on issues involving services provided to the inmate population.

The Commission acknowledged in the NPRM that parties receiving collect calls from public phones participate in the decision to complete a call through a particular carrier. The branding and disclosure requirements discussed in section I, above, should therefore be available to protect all called parties who are solicited to pay for collect calls, whether the calls are placed from prison pay telephones or any other public phones.

IV.

WHETHER THE COMMISSION SHOULD REQUIRE OSPs AND AGGREGATORS TO REVISE CONSUMER LABELING ON PUBLIC PHONES WITHIN A SET TIME PERIOD AFTER A CHANGE IN THE PRESUBSCRIBED CARRIER.

Michigan Attorney General Kelley strongly supports placing a time limit upon aggregators to update consumer information. As noted in the NAAG Petition, Michigan Attorney General Kelley's Consumer Protection Division conducted an informal survey of public phones and determined that a substantial percentage failed to properly identify the OSP on labels on or near the phone. NAAG Petition, at 3, n 5. Given the presence of so many players in the OSP industry and frequent changes of carriers, it is necessary in the interest of accuracy to adopt time limits requiring aggregators and OSPs to convey accurate information to consumers.

Michigan Attorney General Kelley recommends that OSPs and aggregators be required to update consumer information tags

within 7 days after changes in the presubscribed OSP. Unless steps are taken to ensure that the labels are kept reasonably up to date, the outdated, inaccurate labels will continue be a source of misinformation.

V.

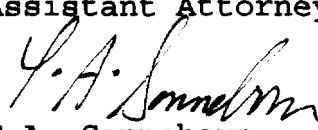
CONCLUSION

In conclusion, Michigan Attorney General Kelley encourages the Commission to require branding and audible disclosures to calling parties and to called parties in collect call situations. Additionally, OSPs and aggregators should be required to update consumer information labels within 7 days of a change in a public phone's presubscribed carrier.

Respectfully submitted,

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Dated: March 8, 1995

ATTACHMENT A

PETITION OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
TELECOMMUNICATIONS SUBCOMMITTEE FOR RULES TO
REQUIRE ADDITIONAL DISCLOSURES BY OPERATOR
SERVICE PROVIDERS OF PUBLIC PHONES.

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MAR 09 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of)
)
Disclosures By Operator) CC Docket No.
Service Providers of Serving)
Public Phones.)

PETITION OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
TELECOMMUNICATIONS SUBCOMMITTEE FOR RULES TO
REQUIRE ADDITIONAL DISCLOSURES BY OPERATOR
SERVICE PROVIDERS OF PUBLIC PHONES.

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General and the Attorneys General of the States of Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, New Hampshire, North Carolina, Pennsylvania, Tennessee, Vermont, West Virginia and Wisconsin (hereinafter "the Attorneys General"), pursuant to 47 CFR § 1.401, petition the Federal Communications Commission ("Commission") to amend 47 CFR § 64.703(a) to require that operator service providers ("OSPs") provide additional information to consumers who use payphones or other public phones. The Attorneys General believe that this proposal is necessary to prevent unfair and deceptive practices and to improve the opportunity for consumers to make informed choices in accordance with the Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. § 226) ("TOCSIA").

UNFAIR AND DECEPTIVE PRACTICES REGARDING OSP SERVICE.

Consumer complaints filed with Attorneys General reveal that persons who use public phones frequently incur unexpected, exorbitant charges or experience billing problems.¹ In these complaints consumers report that long distance calls made from public phones have resulted in charges of more than ten times the charge that a dominant carrier would have billed for the call.² These complaints are similar to complaints filed with the Commission as noted in the pending rule making proceeding regarding billed party preference.³

The failure of some OSPs to inform clearly prospective customers that charges will be many times greater than charges by dominant carriers for comparable calls is unfair and deceptive. Many callers, particularly those using their local or long distance carrier's calling card, believe that they automatically will be connected to their carrier when they make the calls on public phones. This misunderstanding is furthered when the name of an OSP is stated quickly or hidden in a sentence supplying other information or resembles the name of a well-known carrier or company. Other callers may understand that they are using another carrier, but expect that the cost of the call would be reasonable as was the case when payphone rates were regulated. These

¹"Public phones" refer to payphones and other aggregator phones, such as hotel phones.

²Attached herewith are examples of consumer complaints regarding problems experienced by public phone users and media accounts reporting similar experiences (Attachment 1).

³In the Matter of Billed Party Preference for 0+InterLATA Calls, 9 FCC Rcd 3320, 3321 (1994).

consumers are unaware that the cost of time sensitive charges plus connection fees could be many times their regular carrier's charges.

Congress sought to address the problem of exorbitant charges and other unfair OSP practices by enacting TOCSIA, 47 U.S.C. §226. Under this act, the Commission was required to promulgate rules to protect consumers from unfair and deceptive practices and to enable consumers to make informed choices in placing such calls.⁴ 47 U.S.C. §226(d)(1).

In response, the Commission prescribed rules which require that each OSP provide an audible identification prior to completion of a call and before a charge is incurred and required unblocking of payphones so that callers could "dial around" the prescribed carrier. 47 C.F.R. §§ 64.703 and 64.704. In addition, price information must be made available to a consumer, but only upon request. 47 C.F.R. §64.703(a). However, consumer complaints and investigations conducted by Attorneys General indicate that many OSPs may not be in compliance with Commission rules mandating disclosures on payphones and prohibiting blocking of dial around access. Furthermore, consumers' ability to obtain price information in a timely manner is also suspect.⁵

⁴The problem with excessive charges is not limited to interstate public phone charges, but occurs for intrastate calls as well. Many state regulatory agencies limit OSP charges for local and intrastate toll calls. Some state agencies have even prohibited OSP services to address these problems. The Michigan Attorney General has taken action against excessive intrastate charges based on that state's consumer protection law (Attachment 2).

⁵The Michigan Attorney General's office conducted an informal survey of public pay phones in early 1994 to investigate compliance (continued...)

The current regulatory provisions may have provided important information to sophisticated OSP users, but continuing complaints about unexpected, exorbitant charges demonstrate that the rules do not provide sufficient information or protection to many consumers. Additional measures are needed to carry out Congressional intent that public phone users have meaningful information to make informed choices.

**ADDITIONAL DISCLOSURES SHOULD BE MADE SO THAT CONSUMERS
HAVE INFORMATION TO MAKE INFORMED CHOICES.**

The Attorneys General are convinced that many consumers need immediate redress from the oppressive pricing practices of some OSPs. The benefits of deregulation should not only accrue to sophisticated users, but should be readily available to all users of payphone and other OSP services. The Attorneys General strongly urge the Commission to adopt a requirement that OSPs whose rates and connection fees and other charges are not at or below dominant carrier rates provide to consumers, through a voice-over following carrier identification, a statement such as the following:

This may not be your regular telephone company and you may be charged more than your regular telephone company would charge for this call. To find out how to contact your regular telephone company call 1-800-555-1212.


⁵(...continued)
with labeling, branding, rate information and unblocking requirements. Results of the survey showed that substantial percentages of pay phones: (1) were not properly labeled with the presubscribed OSP's identity; (2) were served by OSPs who furnished audible branding that did not match the company identified on labels or stickers on the telephone; (3) were served by OSPs who were not able to provide directions for contacting the carrier of the caller's choice beyond telling the caller to look on the back of a calling card; and (4) were served by OSPs who were not able to provide a rate quote in less than 3 minutes. (Attachment 2).

The Attorneys General believe that such an audible disclosure would foster price competition for users of public phone services. Consumers would be put on notice that the cost of a call may be significantly greater than otherwise anticipated. These additional disclosures should provide consumers with a fairer opportunity to make an informed purchase of OSP services.

The Attorneys General are aware that the Commission is considering a technological proposal which, if adopted, may resolve this problem. In the Matter of Billed Party Preference for 0+InterLATA Calls, 9 FCC Rcd 3320 (1994), CC Docket 92-77. However, the Commission's notice indicated that it may take two and one-half years after adoption before billed party preference ("BPP") would be available. The Attorneys General believe that the proposed disclosures could be adopted as an interim measure while BPP or other approaches are being evaluated. In the event that BPP is not adopted by the Commission, this recommendation would provide needed protection for consumers.

Respectfully submitted,

/s/ ERNEST D. PREATE, JR.
ERNEST D. PREATE, JR.
Attorney General
Commonwealth of Pennsylvania


JAMES E. DOYLE
Attorney General
State of Wisconsin

Co-Chairpersons
Telecommunications Subcommittee
Consumer Protection Committee
National Association of Attorneys General

The following Attorneys General join in this petition:

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Dated: February 8, 1995